IN THE HIGH COURT OF DELHI

FAO No.317/2004

M/s United India Insurance Co. Ltd. ..... Appellant
! through: Mr.A.K. De and Mr. V.P. Tripathi, Advocates.

VERSUS

$ Smt. Leela Devi & Ors. ..... Respondents
^ through: Mr.Alok K. Bhattacharya, Advocates for respondent Nos. 1 to 5.
Mr.Randhir Jain for respondent nos. 6 and 7.

% DATE OF DECISION: 23.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Heard for disposal.

2. A short question arises for consideration in the instant appeal. It is urged by learned counsel for the appellant that in view of the decision of the Supreme Court reported as *Ved Prakash Garg vs. Premi Devi & Ors.* 1998 (1) ACJ 1 insurance company is not liable to pay the penalty imposed by the Commissioner Workmen's Compensation.

3. The relevant facts are that Uttam Singh, the husband

of Leela Devi, the father of Tarvinder Singh and Naveen Singh and the sone of Darman Singh and Bacchi Devi was employed by M/s.Sai Paints Pvt. Ltd. as a driver. He was assigned duties under Dinesh Kumar Virmani, a director of M/s.Sai Paints Pvt. Ltd. While on duty and driving a car bearing No.DL-6C-C-3690 in respect whereof M/s.Sai Paints Pvt. Ltd. had obtained an insurance cover died at a road accident on 19.1.1999 when truck No.HR-47-3792 hit the car. His legal heirs claimed to have served a notice of demand on 4.6.1999 praying that compensation under the Workmen's Compensation Act 1923 be paid to them. None was paid. They filed a claim petition before the Commissioner Workmen's Compensation impleading M/s.Sai Paints Pvt. Ltd. as respondent No.1, Dinesh Kumar Virmani and the appellant as respondent No.3. The employers admitted that Uttam Singh was employed as a driver by them and had died at a road accident while driving car owned by the company. His salary at Rs.2,441/- per month was admitted. The insurance company admitted its liability as the insurer of the vehicle. Considering the admitted facts the Commissioner Workmen's Compensation had to apply the relevant factors as per Schedule IV to Section 4 of the Workmen's Compensation Act. So applying it was found that Rs.2,60,769/- were payable as compensation to the dependents. The amount of the compensation awarded was not deposited. 2

years and 6 months went by. The Commissioner Workmen's Compensation passed the order dated 9.1.2004 levying penalty under Section 4-A(3)(b) of the Act. 50% of the amount held payable was levied by way of penalty i.e. Rs.1,30,385.50 was held to be the penalty payable.

4. It is urged in the appeal that the insurance company is not liable to pay the penalty.

5. The issue in the present appeal revolves around Section 4A of the Workmen Compensation Act which reads as under:-

> **4A. Compensation to be paid when due and penalty for default**.-(1) Compensation under Section 4 shall be paid as soon as it falls due.
>
> (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.
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> (3) where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall-
>
> (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

PROVIDED that an order for the payment of penalty shall not be passed under Clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed……..”

6. In the decision reported as *Ved Prakash Garg v Premi Devi & Ors.* 1998 (1) ACJ 1 a question arose before the Supreme Court whether the phrase “liability arising under the Workmen Compensation Act” as employed by the proviso to sub-section (1) of Section 147 of the Motor Vehicles Act, 1988 and as found under the proviso to clause (i) of sub-section (1) of Section II of the Insurance Policy would cover only the principal amount of compensation as computed by the Workmen's Commissioner or whether it can also include interest and penalty as imposed on the insured employer under contigencies contemplated by Section 4A(3)(a) and (b) of the Workmen Compensation Act.

7. After examining the entire scheme of the Workmen Compensation Act, the Supreme Court has held that:-

I. Payment of interest and penalty are two distinct liabilities arising under the Workmen Compensation Act.

II. Penalty is not a part and parcel of the legal liability of the employer to compensate his employee and since the insurer is under contractual obligation to idemnify the employer for his

legal liability the insurer is not liable to pay the penalty.

III. Liability to pay interest is part and parcel of legal liability of the employer to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation payable under the Workmen Compensation Act along with interest thereon will have to be made good by the Insurance Company jointly with the insured employer.

8. Relevant discussion is to be found in paras 14 and 19 of the said decision which are being reproduced herein below:-

> “14. On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reason for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the Policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer under Section 3 read with Section 4-A of the Compensation Act. All these provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen. As we have seen earlier while discussing the

scheme of Section 4-A of the Compensation Act the legislative intent is clearly discernible that once compensation falls due and within one month it is not paid by the employer then as per Section 4-A(3)(a) interest at the permissible rate gets added to the said principal amount of compensation as the claimants would stand deprived of their legally due compensation for a period beyond one month which is statutorily granted to the employer concerned to make good his liability for the benefit of the claimants whose bread-winner might have either been seriously injured or might have lost his life. Thus so far as interest is concerned it is almost automatic once default, on the part of the employer in paying the compensation due, takes place beyond the permissible limit of one month. No element of penalty is involved therein. It is a statutory elongation of the liability of the employer to make good the principal amount of compensation within permissible time limit during which interest may not run but otherwise liability of paying interest on delayed compensation will ipso facto follow. Even though the Commissioner under these circumstances can impose a further liability on the employer under circumstances and within limits contemplated by Section 4A(3)(a) still the liability to pay interest on the principal amount under the said provision remains a part and parcel of the statutory liability which is legally liable to be discharged by the insured employer. Consequently such imposition of interest on the principal amount would certainly partake the character of the legal liability of the insured employer to pay the compensation amount with due interest as imposed upon him under the Compensation Act. Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and not dehors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the

claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4A(3) may start running for the purpose of attracting interest under Sub-clause (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then Section 4A(2)would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the aw ard but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4A(3)(a)of the Compensation Act. But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4A(3)(b) of the Compensation Act after issuing show cause notice to the employer concerned who will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However if ultimately the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay

and due to his own personal fault he is held responsible for the delay, then penalty would get imposed on him. That would add a further sum up to 50% on the principal amount by way of penalty to be made good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term ' liability incurred' by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicles Act as well as by the terms of the Insurance Policy found in provisos (b) and (c) to Sub-section (1) of Section II thereof. On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner Sections 3 and 4A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner.(emphasis supplied)

19. As a result of the aforesaid discussion it must be held that the question posed for our consideration must be answered partly in the affirmative and partly in the negative. In other words the insurance company will be liable to

> meet the claim for compensation along with interest as imposed on the insured employer by the Workmen's Commissioner under the Compensation Act on the conjoint operation of Section 3 and Section 4-A Sub-section (3)(a) of the Compensation Act. So far as additional amount of compensation by way of penalty imposed on the insured employer by the Workmen's Commissioner under Section 4A(3)(b) is concerned, however, the insurance company would not remain liable to reimburse the said claim and it would be the liability of the insured employer alone.(emphasis supplied)

9. In view of law laid down by the Supreme Court in *Ved Prakash*'s case (supra), it is held that the appellant insurance company is not liable to pay penalty of Rs.1,30,385.50 which was awarded by the Commissioner Workmen's Compensation for violation of the order passed by him i.e. in depositing the compensation awarded the Commissioner within the time stipulated.

10. Award is modified insofar as the liability to pay the penalty is fastened on the insurance company.

11. Claimants shall be entitled to recover the amount of penalty from the employer M/s Sai Paints Pvt. Ltd. respondent no.6.

12. Appeal is allowed in terms of paras 9 and 10 above.

13. No costs.

November 23, 2007 **PRADEEP NANDRAJOG, J.**

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